

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND, *et al.*,

Debtors.¹



**Order Filed on October 18, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey**

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

STIPULATION AND CONSENT ORDER

**BETWEEN THE DEBTORS AND NORDSTROM INC. AND BLUE OWL REAL ESTATE LLC AND OAK
STREET INVESTMENT GRADE NET LEASE FUND SERIES 2021-2, LLC**

The relief set forth on the following pages, numbered 2 through 8, is hereby **ORDERED**.

DATED: October 18, 2023

**Honorable Vincent F. Papalia
United States Bankruptcy Judge**

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083

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This stipulation and order (the “Stipulation”) is made by and between the above-captioned debtors and debtors in possession (collectively, the “Debtors”) And NORDSTROM, INC. (“Nordstrom”) and BLUE OWL REAL ESTATE LLC and OAK STREET INVESTMENT GRADE NET LEASE FUND SERIES 2021-2, LLC (collectively, “Oak Street” and together with the Debtors and Nordstrom, the “Parties”) by and through their respective duly authorized undersigned counsel.

RECITALS

WHEREAS, on April 23, 2023 (the “Petition Date”), each of the Debtors commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtors’ chapter 11 cases (the “Chapter 11 Cases”) have been jointly administered for procedural purposes only pursuant to rule 1015(a) of the Federal Rules of Bankruptcy Procedure;

WHEREAS, on or about March 28, 2013, Bed Bath & Beyond Inc. (“BBB”), as landlord and Nordstrom, as tenant, entered into a written lease (the “Lease”) pursuant to which Nordstrom leased approximately 39,180 square feet of floor space at the shopping center known as Gallery on the Parkland located in Addison, Texas (the “Shopping Center”) as more fully described in the Lease; and

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WHEREAS, the Lease was for a term of ten years with options for four successive five-year terms, for a total of thirty years if all options were exercised; and

WHEREAS, at all times since entering into the Lease, Nordstrom has remained in continuous and visible possession of the leased premises (the “Leased Premises”) and has performed its obligations thereunder without default; and

WHEREAS, the balance of the Shopping Center, other than the Leased Premises, was retained by or leased to affiliates of the Debtors (the “Remainder of the Shopping Center”); and

WHEREAS, in or about December 2019, BBB entered into a sale-leaseback with one or more affiliates of Oak Street, pursuant to which BBB conveyed its fee interest in and to the Shopping Center to an Oak Street affiliate and entered into a lease (the “Leaseback”) with the Oak Street affiliate as landlord and BBB as tenant; and

WHEREAS, on July 28, 2023, the Debtors filed and served *Debtors’ Motion for Entry of an Order (I) Authorizing (A) Rejection of Certain Unexpired Leases and (B) Abandonment of any Personal Property, Effective as of the Rejection Date and (II) Granted Related Relief* (the “Rejection Motion”) [Dkt. 1613]; and

WHEREAS, although the Rejection Motion does not identify Nordstrom as a “Non-Debtor Counterparty” to a lease to be rejected, nor is the Lease specifically designated in the schedule to the Rejection Motion as a Lease that will be rejected (*see* Dkt. 1613), the Rejection Motion does purport to reject “Subleases related to the Leases.” *Id.*; and

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WHEREAS, the Parties entered into stipulations extending the time in which Nordstrom may object to relief requested in the Rejection Motion (*see* Dkt. 1893, the “First Stipulation” and Dkt. 2076. The “Second Stipulation”) which stipulations also provided that the Debtors shall have no obligation to pay Oak Street rental amounts related to the Shopping Center for any period following July 31, 2023 and that Nordstrom shall pay any rental amounts and all other obligations due under the Lease directly to Oak Street as such obligations become due under the Lease; and

WHEREAS, Nordstrom timely filed its objection to the Rejection Motion (Dkt. 2146); and

WHEREAS, the Debtors have agreed to withdraw the Rejection Motion solely as it affects the Lease and without affecting the Debtors’ rejection of the Leaseback or the rejection of leases affecting the Remainder of the Shopping Center.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE PARTIES HERETO ACKNOWLEDGE RECEIVING, IT IS HEREBY STIPULATED, AGREED AND ORDERED AS FOLLOWS:

1. The recitals set forth above are hereby made an integral part of the Parties’ Stipulation and are incorporated herein.

2. This Stipulation is subject to and conditioned upon the entry of a final order of the Court approving this Stipulation (the “Stipulation Effective Date”). Prior to the Stipulation Effective Date, nothing (including the Recitals) contained in this Stipulation, any submissions filed seeking an order from the Court approving this Stipulation, or any correspondence or other communications related to the negotiations, drafting or approval of this Stipulation, shall be argued

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or deemed to be an admission against any Party's interest in any litigation by and between any parties, and the Parties shall be automatically returned to their respective positions status quo ante.

3. Upon the Stipulation Effective Date:

- a. the Rejection Motion is withdrawn solely as it affects the Lease and without affecting the Debtors' rejection of the Leaseback or the rejection of leases affecting the Remainder of the Shopping Center;
- b. Nordstrom shall pay any rental amounts and all other obligations due under the Lease directly to Oak Street as such obligations become due under the Lease and its right to possession of the Leased Premises shall remain unimpaired by the Rejection Motion or any of the proceedings in this bankruptcy case;
- c. The Lease shall remain in full force and effect as and between Nordstrom, as tenant, and Oak Street, as landlord.

4. This Stipulation is the entire agreement between the Parties with respect to the subject matter hereof. This Stipulation supersedes any and all agreements, whether written or oral, that may have previously existed between the Parties with respect to the matters set forth herein. No statements, promises, or representations have been made by any Party to any other, or relied upon, and no consideration has been offered, promised, expected, or held out other than as expressly provided for herein.

5. The Parties, by and through their undersigned counsel, each represent and warrant that the undersigned is fully authorized and empowered to execute and deliver this Stipulation on behalf of, and to bind, each Party, as applicable, to the terms and conditions of this Stipulation.

6. Each of the Parties further acknowledges that it has been fully advised with respect to its rights and obligations under this Stipulation by counsel of its own choosing. Each of the Parties has consulted with counsel of its own choosing and has had adequate opportunity to make

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whatever investigation or inquiry it deems necessary or desirable with respect to the subject matter and terms of this Stipulation.

7. In the event of any ambiguity in this Stipulation, no inferences shall be drawn against any Party on the basis of authorship of this Stipulation. This Stipulation shall be binding and inure to the benefit of the Parties hereto, their successors and assigns, including without limitation, as to the Debtors, any chapter 7 or chapter 11 trustee, plan administrator or estate representative, and any liquidation trustee under the Debtors' confirmed plan of liquidation.

8. No modification, amendment, or waiver of any of the terms or provisions of this Stipulation shall bind any Party unless such modification, amendment or waiver is in writing, has been approved by the Court, and has been executed by a duly authorized representative of the Party against whom such modification, amendment or waiver is sought to be enforced. If any part of this Stipulation is held to be unenforceable by any court of competent jurisdiction, the unenforceable provision shall be deemed amended to the least extent possible to render it enforceable and the remainder of this Stipulation shall remain in full force and effect

9. This Stipulation shall be governed by and construed in accordance with the Bankruptcy Code and where not inconsistent, the laws of the State of New Jersey, without regard to the conflict of laws principles thereof. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective successors, assignees, agents, attorneys and representatives.

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10. This Stipulation may be executed in one or more counterparts, including by facsimile and/or electronic mail, each of which when so executed shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same Stipulation.

11. This Stipulation constitutes the entire agreement between the Parties in respect of the subject matter hereof and shall not be modified, altered, amended, or vacated without the prior written consent of all Parties hereto. No statement made or action taken in the negotiation of this Stipulation may be used by any Party for any purpose whatsoever.

SIGNATURES FOLLOW

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Dated: October 17, 2023

/s/ Jeffrey A. Wurst

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